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NTSB Order No. EA-3903

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of June, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11139
v.)	
)	
NEIL T. HANSEN,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge Joyce Capps at the conclusion of an evidentiary hearing held in this matter on March 26, 1991.¹

In that decision, the law judge affirmed in its entirety an order of the Administrator suspending respondent's mechanic certificate for 20 days. The order alleged:

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

1. You hold Mechanic Certificate Number 503305046 with Airframe and Powerplant ratings.
2. On March 30, 1989, you signed the airworthiness release for civil aircraft N304EA, an L-1011, and approved the aircraft for return to service.
3. At the time you made the aforesaid entry, several discrepancies listed on the non-routine worksheet for N304EA had not been corrected.
4. The Air Specialties Corporation [respondent's employer] Manual requires that all discrepancies be cleared before the airworthiness release is signed.

By reason of the foregoing circumstances, you violated Section 43.13(a) of the Federal Aviation Regulations [14 C.F.R. 43.13 (a)²], in that you failed to use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual, or other methods, techniques, and practices acceptable to the Administrator.

For the reasons discussed below, we will grant respondent's appeal and reverse the initial decision and the order of suspension.

The pertinent facts are largely undisputed. On the morning of March 30, 1989, two FAA airworthiness inspectors performed a

² Section 43.13(a) provides:

§43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

ramp inspection of an L-1011 aircraft located at the Minneapolis Airport and operated by Air Specialties Corp (a Part 121 carrier also known as Air America). One of those inspectors, Orin Quinnell, testified that they presented the company's lead mechanic with a list of 15 discrepancies they had found (Exhibit A-1), and told him to write them up according to company procedures. According to Inspector Quinnell, by this he meant that the discrepancies should be documented on the company's "non-routine" worksheet and then be either repaired or properly deferred. (Tr. 16-7.)

The mechanic's actions after this point are unclear but the aircraft log shows that a daily inspection of the aircraft was signed off as accomplished, and one discrepancy (inoperative smoke detector in a lavatory) was logged and deferred. Subsequent developments (as discussed below) revealed that some, but not all, of the other discrepancies discovered during the ramp inspection were repaired.

Respondent, who served as flight engineer on the subject aircraft, testified that the mechanic told him that all of the discrepancies resulting from the FAA's ramp inspection had been "cleared." (Tr. 59-60.) Although he did not show respondent any paperwork pertaining to those discrepancies, he described some of them. (Tr. 61.) Respondent testified that he "double checked" those items and, finding the results satisfactory,³ signed the

³ Although not relevant to our disposition of this appeal, we note, as did the law judge (Tr. 62-3), that some of the items the mechanic told respondent had been corrected, appear in fact

airworthiness release in the aircraft log.⁴ (See Exhibit A-4.) The aircraft then made its planned flight to Las Vegas, Nevada.

The inspectors returned to the Minneapolis airport later in the day and saw the aircraft taxiing out for takeoff. They called ahead to FAA safety inspectors in Las Vegas, and asked them to ramp check the aircraft upon its arrival. They sent the Las Vegas inspectors, by facsimile, the list of discrepancies they had compiled that morning. The ramp check in Las Vegas revealed that some of those discrepancies had been repaired, but many had not been corrected. In Inspector Quinnell's opinion, as many as six of the uncorrected discrepancies rendered the aircraft unairworthy.⁵

After the aircraft returned to Minneapolis that night, Inspector Quinnell talked with the company mechanic, who showed him the non-routine worksheets he had prepared sometime that day.⁶ (See Exhibit A-3.) Those worksheets documented 13 of the
(..continued)
not to have been fixed or properly deferred. (See Tr. 61 and Exhibit A-2.) A separate enforcement action is apparently being pursued against the mechanic. (Tr. 54-5.)

⁴ Respondent, in addition to his role as a flight crewmember, was also a certificated mechanic with an Airframe and Powerplant rating, and was thus authorized to sign the airworthiness release. Company policy apparently allowed, if not encouraged, flight engineers to sign the airworthiness release portion of the aircraft log. (Tr. 41, 55.)

⁵ Specifically, he cited: a broken seal on a first aid kit; four missing life vests; some missing "fasten seat belt" placards; a possibly inoperative smoke detector in a lavatory; two overhead storage bins not locking; and a broken trash container. (Tr. 29-30.)

⁶ Although Inspector Quinnell testified that he saw some non-routine worksheets in the aircraft cabin that morning during

15 discrepancies on the inspectors' original list, but showed no corrective action taken for eight of those.⁷ It was the existence of these open discrepancies, the Administrator alleged in his complaint, which rendered respondent's signing of the airworthiness release improper, and in violation of section 43.13(a). The law judge agreed, finding that if respondent had "demanded to see the available paper work, he would have known . . . that there were open discrepancies," some of which rendered the aircraft unairworthy. (Tr. 74.)

On appeal, respondent argues that (1) section 43.13(a) is not applicable to this case in that he did not perform any maintenance within the meaning of that section; (2) he had no duty to seek out non-routine worksheets that might not even have existed at the time he signed the release, but rather was only required to examine the aircraft logbook -- which showed no open discrepancies -- in order to determine whether all discrepancies

(..continued)
his inspection (Tr. 36), these could not have pertained to the discrepancies which were discovered during that inspection, since those worksheets obviously could not have been prepared until sometime after the inspection. Contrary to the law judge's assumption that the pertinent worksheets were "available" to respondent (Tr. 74), there is no evidence in the record that respondent had access to the non-routine worksheets which pertained to the discrepancies discovered during this inspection, or that they even existed, at the time respondent signed the airworthiness release. Indeed, the fact that the mechanic had those worksheets (showing some items still uncorrected) in his briefcase at the end of the day (Tr. 54) suggests that they were not even on board the aircraft when it took off from Minneapolis.

⁷ A subsequent version of that same set of worksheets, obtained by the FAA the following day, shows that corrective action was eventually recorded for all the discrepancies listed. (See Exhibit A-6.)

had been cleared before signing the airworthiness release; and (3) he was not properly notified of the discrepancies discovered in the FAA's ramp inspection, or that any of those discrepancies remained open at the time he signed the airworthiness release, because the FAA's findings, although "informally" reported to the company's lead mechanic, a) were never formalized in an official "Condition Notice" and, b) (save one) were not entered by the lead mechanic in the aircraft logbook, as required.⁸ Because we agree with the respondent that section 43.13(a) is not applicable to this case, we need not resolve the issues presented by his other two arguments.⁹

We find no sound basis for concluding that respondent's signing of the airworthiness release in effect made him a guarantor of the adequacy of the work performed by the mechanic whose job it was to meet the performance standards in section 43.13(a).¹⁰ This is not to say that signing such a release with knowledge of unresolved discrepancies would not raise an issue as

⁸ The Administrator has filed a reply brief opposing respondent's appeal.

⁹ Respondent has attached to his brief excerpts from two FAA Orders (2150.3A and 8300.10) which were not offered or admitted into evidence. Although the Administrator does not object to, or move to strike, these documents, we have not considered them in our disposition of this case.

¹⁰ The company operations manual provides that the signature of a mechanic who (unlike respondent in this case) has taken corrective action with regard to discrepancies, constitutes the certification required under 14 C.F.R. 121.709(b)(2), essentially stating that the work was properly performed. (Exhibit A-5, p. 2.) The Administrator does not argue that this provision was applicable to respondent's signature in this case.

to a crewmember's accountability under some other regulation, for example 14 C.F.R. 91.7(a) (prohibiting operation of an unairworthy aircraft), not charged here. At the same time, we are not persuaded that respondent's sign off, pursuant to company policy, constituted "maintenance, alteration, or preventive maintenance," as those terms are used in section 43.13(a).

We recognize that "maintenance" is defined to include "inspection" (see 14 C.F.R. 1.1). Nevertheless, we do not read respondent's duty, under the company operations manual, to "check that all discrepancies are properly cleared" before signing the airworthiness release (see Exhibit A-5, p. 2) to have imposed on him the obligations of an inspecting mechanic. We note that in Administrator v. Alphin, 3 NTSB 3600 (1981), which the Administrator cites in support of his position that respondent should have inspected the aircraft before signing the airworthiness release, the respondent was acting pursuant to his inspection authorization, a rating which respondent in this case does not even hold. Furthermore, the complaint in this case contains no allegation, or even any implication, that respondent performed an improper inspection.¹¹

¹¹ Aside from the absence of support in the record for the Administrator's proposition that the word "check" should be read to include "inspect," we must reject the Administrator's position simply because it is inconsistent with the terms of his complaint. Furthermore, even if the complaint had alleged a faulty inspection, we are doubtful that such a charge could be sustained on this record. We do not think that respondent's "double checking" of some of the lead mechanic's work constitutes the sort of inspection that would be considered "maintenance" under section 43.13(a).

In sum, because the regulation which respondent is charged with violating does not apply to his allegedly improper conduct (signing of the airworthiness release), the Administrator's order cannot stand.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted;
2. The initial decision is reversed; and
3. The Administrator's order of suspension is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.